

PATENT
Customer No. 22,852
Attorney Docket No. 08702.0005-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Lorenz et al.) Group Art Unit: 1644
Serial No.: 09/816,697) Examiner: Phillip Gabel
Filed: March 23, 2001)
For: A Novel P-Selectin Glycoprotein)
Ligand (PSGL-1) Binding Protein)
and Uses Therefor)

AFFIDAVIT OF LESLIE A. MCDONELL

I, Leslie A. McDonell, do hereby make the following declaration:

1. On February 4, 2002, I received an e-mail from in-house counsel for assignee, Genetics Institute, indicating that an examiner had called to issue a restriction requirement in the above-captioned application. I telephoned Examiner Jamroz later that week and took notes on an eight-way restriction requirement, which I then reported to my client.

2. On or before March 4, I telephoned Examiner to provisionally elect Group VIII with traverse. I argued that Groups VI and VIII were nearly coextensive, did not require separate searches, and that at least the claims from these groups should be examined together. During that telephone conversation, Examiner Jamroz did not tell me that she had issued a written restriction requirement on February 11, 2002.

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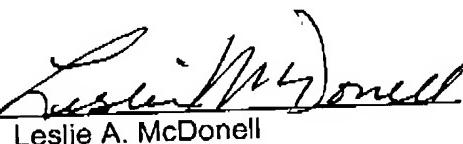
3. On March 5, 2002, a copy of the February 11, 2002 Office Action requiring restriction of the claims was received at the Palo Alto Office of Finnegan, Henderson, Farabow, Garrett & Dunner. I received a copy of that Office Action the following week. The delay in receipt was due to a change in the law firm representing assignee, Genetics Institute.

4. After reviewing the restriction requirement, I instructed Konstantin Linnik to telephone Examiner Jamroz to inquire whether the telephone election I had made was effective or whether a written response to the Office Action should be filed. Upon information and belief, Mr. Linnik made this call to Examiner Jamroz. Upon further information and belief, Examiner Jamroz assured Mr. Linnik that the telephone election had been entered in the system and advised him to disregard the mailed Office Action.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: June 25, 2002

By:



Leslie A. McDonell

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